

## Federal Communications Commission

## § 1.823

herein; and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated herein by reference are open for public inspection at the offices of the Commission.

(c) *Cross references*—(1) *Applicability of cable television EEO reporting requirements to MDS and MMDS facilities*, see § 1.820 of this chapter.

(2) *Applicability of cable television EEO reporting requirements for FSS facilities*, see § 1.825 of this chapter.

[35 FR 12894, Aug. 14, 1970, as amended at 36 FR 3119, Feb. 18, 1971; 58 FR 42249, Aug. 9, 1993]

### GRANTS BY RANDOM SELECTION

#### § 1.821 Scope.

The provisions of §§ 1.822, 1.823, 1.824 and 1.825 apply as indicated to those applications for permits, licenses or authorizations in the Public Mobile Services, Multichannel Multipoint Distribution Service and Digital Electronic Message Service for which action may be taken by the Chief, Common Carrier Bureau pursuant to delegated authority.

[59 FR 59503, Nov. 17, 1994]

#### § 1.822 General selection procedures.

(a) Mutually exclusive applications for permits and licenses in the services specified in § 1.821 may be designated for random selection according to the procedures established for each service. Following the random selection, the Commission shall determine whether the applicant is qualified to receive the permit or license. If, after reviewing the tentative selectee's application and pleadings properly filed against it, the Commission determines that a substantial and material question of fact exists, it shall designate the qualifying issue(s) for an expedited hearing.

(b) Expedited hearing procedures. (1) Hearings may be conducted by the Commission or an Administrative Law Judge. In the case of a question which requires oral testimony for its resolution, the hearing will be conducted by an Administrative Law Judge.

(2) Parties have ten (10) days from publication in the FEDERAL REGISTER of the hearing designation order to file notices of appearance.

(3) When the Commission, under § 1.221, issues an order stating the time, place, and nature of the hearing, this order shall instruct the applicant to submit its direct case in writing within thirty (30) days from the order's release date, or as otherwise specified in the order. The direct written case must set forth all those facts and circumstances related to the issues in the designation order. Documentary evidence upon which the applicant relies must be attached. Each exhibit must be numbered and must be accompanied by an affidavit from someone who has personal knowledge of the facts in the submission and who attests to the truth of the submission.

(4) The order will also specify those petitioners that directly raised an issue which was designated and will inform these parties of their opportunity to submit a written rebuttal case within twenty (20) days after the direct case is due. The procedures in paragraph (b)(3) of this section will apply as to documentary evidence, exhibits, and affidavits.

(5) Appeal of initial decisions rendered by an Administrative Law Judge shall lie with the Commission.

[48 FR 27201, June 13, 1983. Redesignated and amended at 50 FR 5991, Feb. 13, 1985]

#### § 1.823 Random selection procedures for the Public Mobile Services.

(a) *General Procedures*. If there are mutually exclusive applications for an initial license, the Commission may use a random selection process. Each such random selection shall be conducted under the direction of the Chief of the Common Carrier Bureau. The designated Lottery Official shall select the winning applicant from among mutually exclusive applicants. The Lottery Official may select in rank order a number of additional applicants. The number of additional applicants selected will be determined by the Chief of the Common Carrier Bureau and the Managing Director. No preferences shall be awarded to participants. Following the random selection, the Commission shall announce the tentative

selectee and determine whether this applicant is qualified to receive the license. If the Commission determines that the tentative selectee is qualified, it shall grant the application.

(b) *Petitions to Deny*—(1) *Public Mobile Services other than the Cellular Radiotelephone Service*. Petitions to Deny and other pleadings may be filed against applications but are not reviewed prior to the random selection process. Petitions filed against tentative selectee applications are reviewed after the tentative selectee is announced.

(2) [Reserved]

(3) *Cellular Radiotelephone Service, unserved areas*. In the Phase I licensing phase, petitions to deny must be filed within 30 days after the date of public notice announcing the tentative selectee. If the tentative selectee is qualified, the Commission will grant its application and dismiss the losing applications. If the tentative selectee's application cannot be granted, it will be either designated for hearing or dismissed. If the winning application is dismissed or ultimately denied, another lottery will be held to select an application from the remaining applications. In the Phase II licensing phase, petitions to deny must be filed within 30 days from the date of public notice accepting the application for filing.

(c) *Petitions for Reconsideration*. Motions to Stay or Applications for Review may be filed only at such time as the Commission grants or denies the tentative selectee's application. The filing periods specified in the Rules shall apply for such pleadings.

[50 FR 5991, Feb. 13, 1985, as amended at 50 FR 51527, Dec. 18, 1985; 53 FR 52425, Dec. 28, 1988; 56 FR 58506, Nov. 20, 1991; 59 FR 59503, Nov. 17, 1994; 59 FR 59949, Nov. 21, 1994]

**§ 1.824 Random selection procedures for Multichannel Multipoint Distribution Service and Multipoint Distribution Service H-Channel stations.**

(a) If there are mutually exclusive applications for an initial conditional license or license, the Commission may use the random selection process to select the conditional licensee or licensee. Each such random selection shall be conducted under the direction

of the Office of the Managing Director in conjunction with the Office of the Secretary. Following the random selection, the Commission shall announce the tentative selectee and determine whether the applicant is qualified to receive the conditional license or license. If the Commission determines that the tentative selectee is qualified, it shall grant the application. In the event that the tentative selectee's application is denied, a second random selection will be conducted. Petitions for Reconsideration, Motions to Stay or Applications for Review may be submitted at the time the Commission grants or denies the application of the tentative selectee. The filing periods specified in the rules shall apply for such pleadings.

(b) Competing applications for conditional licenses and licenses shall be designated for random selection in accordance with §§ 1.1621, 1.1622 (a), (b), (c), (d), and (e), and 1.1623. No preferences pursuant to § 1.1622 (b)(2) or (b)(3) shall be granted to any MMDS or MDS H-channel applicant whose owners, when aggregated, have an ownership interest of more than 50 percent in the media of mass communication whose service areas, as set forth at § 1.1622 (e)(1) through (e)(7), wholly encompass or are encompassed by the protected service area contour, computed in accordance with § 21.902(d) of this chapter, for which the license or conditional license is sought.

(c) Petitions to Deny may be filed only against the tentative selectee. These petitions must be filed within 30 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 15 days of the due date for Petitions to Deny.

[50 FR 5992, Feb. 13, 1985, as amended at 56 FR 57815, Nov. 14, 1991]

**§ 1.825 Random selection procedures for Digital Electronic Message Service.**

(a) If there are mutually exclusive applications for an initial permit or license for a digital termination system, the Commission may use the random